

**ASSEMBLY BILL**

**No. 661**

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**Introduced by Assembly Member Torlakson**

February 25, 2009

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An act to add Sections 56836.16 and 56836.161 to the Education Code, relating to special education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 661, as introduced, Torlakson. Special education: behavioral intervention plans: mandate claim: funding.

(1) Existing law requires the Superintendent of Public Instruction, on or before September 1, 1992, to develop, and the State Board of Education to adopt, regulations, as specified, governing the use of behavioral interventions for individuals with exceptional needs receiving special education and related services. Existing law prescribes the calculations to be made to determine the amount of General Fund moneys to allocate to each special education local plan area.

This bill would require the Superintendent to perform various calculations to increase the amount of funding per unit of average daily attendance for each special education local plan area, as specified. The bill would appropriate \$65,000,000 from the General Fund to the Superintendent in augmentation of a specified item of the Budget Act of 2009 for purposes of providing that increased funding. The bill also would appropriate \$10,000,000 from the General Fund to the Superintendent for allocation on a one-time basis to county offices of education and special education local plan areas, as specified. The bill would direct that \$85,000,000 be appropriated from the General Fund on a one-time basis in each of the 2011–12 to 2016–17 fiscal years,

inclusive, except as provided, to the Superintendent for allocation to school districts on a per-pupil basis. The Superintendent would be required to use specified calculations to compute the allocation for each school district. The bill would deem the funding described in this paragraph as payments in full satisfaction of, and in lieu of, any reimbursable mandate claims resulting from the statement of decision of the Commission on State Mandates regarding the Behavioral Intervention Plans Mandated Cost Test Claim.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares that it is in  
2     the state's interest that this act be enacted immediately to provide  
3     funding for positive behavioral intervention plans for special  
4     education pupils pursuant to Chapter 959 of the Statutes of 1990  
5     in order to resolve a contested state mandate issue of 14-year  
6     standing. The Legislature anticipates that the Governor will request  
7     the enactment of this act prior to the enactment of the Budget Act  
8     of 2009.

9     SEC. 2. Section 56836.16 is added to the Education Code, to  
10    read:

11    56836.16. (a) The Superintendent shall determine the statewide  
12    total average daily attendance used for the purposes of Section  
13    56836.08 for the 2008–09 fiscal year. For the purposes of this  
14    calculation, the 2008–09 second principal average daily attendance  
15    for the court, community school, and special education programs  
16    served by the Los Angeles County Juvenile Court and Community  
17    School/Division of Alternative Education Special Education Local  
18    Plan Area shall be used in lieu of the average daily attendance  
19    used for that agency for the purposes of Section 56836.08.

20    (b) The Superintendent shall divide sixty-five million dollars  
21    (\$65,000,000), by the amount determined pursuant to subdivision  
22    (a).

23    (c) For each special education local plan area, the Superintendent  
24    shall permanently increase the amount per unit of average daily  
25    attendance determined pursuant to subdivision (b) of Section

1 56836.08 for the 2009–10 fiscal year by the quotient determined  
2 pursuant to subdivision (b). This increase shall be effective  
3 beginning in the 2009–10 fiscal year.

4 (d) Notwithstanding subdivision (c), for the Los Angeles County  
5 Juvenile Court and Community School/Division of Alternative  
6 Education Special Education Local Plan Area, the Superintendent  
7 shall permanently increase the amount per unit of average daily  
8 attendance determined pursuant to subdivision (b) of Section  
9 56836.08 by the ratio of the amount determined pursuant to  
10 subdivision (b) to the statewide target per unit of average daily  
11 attendance determined pursuant to Section 56836.11 for the  
12 2008–09 fiscal year. This increase shall be effective beginning in  
13 the 2009–10 fiscal year.

14 (e) The Superintendent shall increase the statewide target per  
15 unit of average daily attendance determined pursuant to Section  
16 56836.11 for the 2009–10 fiscal year by the amount determined  
17 pursuant to subdivision (b).

18 (f) The funding provided pursuant to subdivisions (a) to (e),  
19 inclusive, and the funding provided pursuant to subdivisions (a)  
20 and (b) of Section 56836.161 shall be deemed as payments in full  
21 satisfaction of, and in lieu of, any reimbursable mandate claims  
22 resulting from the statement of decision of the Commission on  
23 State Mandates regarding the Behavioral Intervention Plans  
24 Mandated Cost Test Claim (CSM 4464). By providing this funding,  
25 the state does not concede the existence of any unfunded  
26 reimbursable mandate with regard to Section 56523 and its  
27 implementing regulations, including subdivisions (c), (d), (e), (f),  
28 and (aa) of Section 3001 and Section 3052 of Title 5 of the  
29 California Code of Regulations, as those provisions read on July  
30 1, 2008. These funds shall be used exclusively for programs  
31 operated pursuant to this part and, as a first priority, for the  
32 programs and services required pursuant to Section 56523 and its  
33 implementing regulations. By virtue of these funds, Section 56523  
34 and its implementing regulations shall be deemed to be fully funded  
35 within the meaning of subdivision (e) of Section 17556 of the  
36 Government Code.

37 (g) Within the meaning of subdivision (e) of Section 17556 of  
38 the Government Code, the funds appropriated for purposes of this  
39 section are not specifically intended to fund any state-mandated  
40 special education programs and services resulting from

1 amendments enacted after July 1, 2008, to any of the following  
2 statutes and regulations:

3 (1) The federal Individuals with Disabilities Education Act (20  
4 U.S.C. Sec. 1400 et seq.), if the amendments result in  
5 circumstances where state law exceeds federal law.

6 (2) Federal regulations implementing the federal Individuals  
7 with Disabilities Education Act (34 C.F.R. Parts 300 and 303), if  
8 the amendments result in circumstances where state law exceeds  
9 federal law.

10 (3) This part.

11 (4) Sections 3000 to 4671, inclusive, of Title 5 of the California  
12 Code of Regulations.

13 (h) State funds appropriated by the annual Budget Act and  
14 otherwise allocated to each special education local plan area  
15 pursuant to Chapter 7.2 (commencing with Section 56836) shall  
16 supplement and not supplant the funds provided pursuant to  
17 subdivisions (a) to (e), inclusive. The funds provided pursuant to  
18 subdivisions (a) to (e), inclusive, shall be in addition to the level  
19 of any cost-of-living adjustment provided for purposes of this  
20 chapter in the annual Budget Act.

21 SEC. 3. Section 56836.161 is added to the Education Code, to  
22 read:

23 56836.161. (a) (1) The amount of eighty-five million dollars  
24 (\$85,000,000) shall be appropriated from the General Fund on a  
25 one-time basis in each of the 2011–12 to 2016–17 fiscal years,  
26 inclusive, to the Superintendent for allocation to school districts  
27 on a per-pupil basis. The Superintendent shall compute the amount  
28 per pupil by dividing eighty-five million dollars (\$85,000,000) by  
29 the total average daily attendance, excluding attendance for regional  
30 occupational centers and programs, adult education, and programs  
31 operated by county superintendents of schools, for all pupils in  
32 kindergarten and grades 1 to 12, inclusive, in all school districts  
33 as used by the Superintendent for the second principal  
34 apportionment for the 2007–08 fiscal year. The allocation for each  
35 school district shall equal the per-pupil amount times the district's  
36 average daily attendance as reported to the Superintendent for the  
37 second principal apportionment for the 2007–08 fiscal year. The  
38 amount allocated to each school district shall be the same in all  
39 subsequent fiscal years as it is in the first fiscal year.

1 (2) Notwithstanding paragraph (1), the state, in its discretion,  
2 may appropriate and allocate amounts in excess of eighty-five  
3 million dollars (\$85,000,000) annually in any of the 2011–12 to  
4 2016–17 fiscal years, inclusive, for the purpose of discharging the  
5 obligation in advance of the period, so long as the total amount  
6 appropriated and allocated pursuant to this section during that time  
7 period is five hundred ten million dollars (\$510,000,000).

8 (3) In any fiscal year, commencing with the 2012–13 fiscal year,  
9 in which the amount of the minimum funding guarantee for the  
10 support of school districts and community college districts is  
11 determined by paragraph (3) of subdivision (b) of Section 8 of  
12 Article XVI of the California Constitution, the annual appropriation  
13 described in paragraph (1) shall not be made.

14 (4) The Director of Finance shall notify, in writing, the fiscal  
15 committees of both houses of the Legislature, the Controller, and  
16 the Superintendent no later than May 14 of a fiscal year if the  
17 appropriation for the following fiscal year is not required pursuant  
18 to paragraph (3). If an appropriation is not made pursuant to  
19 paragraph (1) for a specific fiscal year or years, it shall instead be  
20 made in the fiscal year or years immediately following the final  
21 payment pursuant to paragraph (1).

22 (5) The funds described in this section shall be in addition to  
23 the level of any cost-of-living adjustment provided to school  
24 districts in the annual Budget Act.

25 (b) From the funds appropriated for purposes of this section by  
26 subdivision (b) of Section 4 of the act that added this section, the  
27 Superintendent shall allocate all of the following:

28 (1) The amount of one million five hundred thousand dollars  
29 (\$1,500,000) to county offices of education in equal per-pupil  
30 amounts. The Superintendent shall determine the per-pupil amount  
31 by dividing one million five hundred thousand dollars (\$1,500,000)  
32 by the total statewide county special education pupil count, as  
33 reported by county offices of education as of December 2007. The  
34 allocation for each county office of education shall be the per-pupil  
35 amount times the county's special education pupil count reported  
36 as of December 2007. The Superintendent shall adjust the  
37 computations in such a manner as to ensure that the minimum  
38 allocation to each county office of education is at least five  
39 thousand dollars (\$5,000).

(2) The amount of six million dollars (\$6,000,000) to special education local plan areas that existed for the 2007–08 fiscal year. The Superintendent shall determine the amount of the allocation for each special education local plan area by dividing six million dollars (\$6,000,000) by the statewide special education pupil count reported as of December 2007. The allocation for each special education local plan area shall be the statewide per-pupil amount multiplied by the special education pupil count for the area reported as of December 2007. The Superintendent shall adjust the computations in a manner that ensures that the minimum allocation to each special education local plan area is at least ten thousand dollars (\$10,000).

(3) The amount of two million five hundred thousand dollars (\$2,500,000) to the San Joaquin County Office of Education.

(c) The funding provided pursuant to subdivisions (a) and (b) and subdivisions (a) to (e), inclusive, of Section 56836.16 shall be deemed as payments in full satisfaction of, and in lieu of, any reimbursable mandate claims resulting from the statement of decision of the Commission on State Mandates regarding the Behavioral Intervention Plans Mandated Cost Test Claim (CSM 4464).

SEC. 4. (a) The amount of sixty-five million dollars (\$65,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction in augmentation of Item 6110–161–0001 of the Budget Act of 2009 for purposes of Section 56836.16 of the Education Code. It is the intent of the Legislature that the funding appropriated by this subdivision be included in the annual Budget Act in subsequent fiscal years.

(b) (1) The amount of ten million dollars (\$10,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation on a one-time basis to county offices of education and special education local plan areas pursuant to subdivision (b) of Section 56836.161 of the Education Code. These funds shall be in addition to the level of any cost-of-living adjustment provided for county offices of education and special education local plan areas in the annual Budget Act.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this subdivision shall be deemed to be General Fund revenues appropriated for school districts, as defined

1 in subdivision (a) of Section 41202 of the Education Code, for the  
2 2007–08 fiscal year, and included within the total allocations to  
3 school districts and community college districts from General Fund  
4 proceeds of taxes appropriated pursuant to Article XIII B, as  
5 defined in subdivision (e) of Section 41202 of the Education Code,  
6 for the 2007–08 fiscal year.

7 SEC. 5. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety within  
9 the meaning of Article IV of the Constitution and shall go into  
10 immediate effect. The facts constituting the necessity are:

11 In order to alleviate, at the earliest possible time, the fiscal  
12 hardship to local educational agencies caused by the persistent  
13 shortfalls in federal funding for special education, to increase state  
14 funding for the special education program thereby reducing  
15 encroachment, to facilitate the settlement of current litigation  
16 regarding those programs and the funding thereof, to obviate new  
17 litigation, and to resolve related school finance issues, it is  
18 necessary that this act take effect immediately.